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Current Topics.

Social Insurance.

THE Government did well to issue their recently published proposals for substantially implementing the Beveridge Report under the title "Social Insurance" (Cmd. 6550 and 6551), for, thirty-three years after Mr. LLOYD GEORGE'S revolutionary insurance scheme for the working classes, it extends "to the entire population of all ages, and all occupations or none." Quite apart from the justice of bringing under cover classes whose needs are as great as those already insured, the new scheme has the advantage of making the community stand together in regard to risks which do not fall equally on all shoulders. These points, among others, are carefully noted in the White Paper, which adds the caution that to bring a universal scheme into operation will take an appreciable time. The White Paper also examines and accepts Sir WILLIAM BEVERIDGE'S basic assumptions subject to which a scheme of universal social insurance can be practicable, and points out that the Government's proposals for a comprehensive health service have already been published, as has their policy for maintaining a high and stable level of employment after the war, and that the paper itself contains a scheme of family allowances, to be met wholly out of taxation. Sir WILLIAM BEVERIDGE'S classification (employees, others gainfully occupied, housewives, other persons of working age not gainfully occupied, children below working age, and persons retired and above working age) is adopted. Even classes hitherto excepted on the ground that they are adequately protected by the conditions of their service are to be included under the new scheme, for instance, the police, civil service and some local government and railway employees. The question whether the permanent organisation for administering the scheme should be a new Ministry or an administrative board is reserved, but to bring it into legislative form and to secure its smooth running during the difficult transitional period it is proposed to appoint a Minister of Social Insurance, who will also have the responsibility of bringing into operation and administration the family allowances scheme. The White Paper outlines the procedure for the determination of questions and appeals. Disputes on liability to contribute, class or rate of contribution, etc., will be determined by the Minister, who will have the right to submit the question for decision to the High Court. A party aggrieved by a decision of the Minister will have a right of appeal to the High Court or the Court of Session in Scotland on questions of law. Decisions on unemployment benefit will be taken in the first instance by insurance officers. An appeal will lie to a local tribunal constituted on the lines of the existing courts of referees under the Unemployment Insurance Acts, with final appeals to an umpire. There will be provisions for appeals to the High Court on questions of law arising on the consideration of sickness, invalidity, and maternity benefits and grant, pensions and widow's and guardian's benefit. The finance of the scheme is explained in detail. The tripartite method of finance by contributions from beneficiary, employer and the Exchequer is retained. The increased cost of the new scheme to the Exchequer and local rates is estimated at £74 millions, exclusive of the cost of providing meals and milk to school children under the family allowances scheme and the cost of training allowances to unemployed people. The inclusion in the estimated income of the new scheme of a sum of £15 millions on account of interest on existing funds is based on the setting free of sums amounting to some £550 millions standing to the credit of the existing national health insurance funds, pensions accounts and unemployment fund. Of this amount approximately £245 millions represent moneys in the National Health Insurance funds consisting chiefly of the assets of approved societies.

The Approved Societies.

THE arrangements for the employment of approved societies as agents for paying benefit under a unified scheme of social insurance are foreshadowed in an appendix to Pt. I of the White Paper on Social Insurance. One or other of two forms is suggested. Either a society might be a responsible agent taking decisions, authorising payments and making provision for sickness visitation, subject only to general supervision and audit; or a society might be merely a paying agent acting on the directions of the central authority. In favour of the former proposal, which is that recommended in the Beveridge Report, it is stated that the features of personal and friendly contact would be retained, and that it would enable private benefits to be administered in association with State benefit of similar character. It would also help to maintain the administration of benefits on a local and self-governing basis, and would avoid the displacement of a number of approved societies' officials. The White Paper examines the pros and cons of each arrangement, and observes that under either alternative there would be a dual system of administration, since it would be necessary for the central department to maintain local offices to administer (1) the benefits, other than sickness benefit, of insured persons generally, and (2) the sickness benefits of those who did not choose to join an approved society. The Government, it is stated, have had an opportunity of receiving the considered views of the approved societies through deputations representing most types of society. These deputations did not accept the argument for the abolition of approved societies but submitted detailed proposals under which the societies would act as responsible agents taking decisions and authorising payments. The White Paper summarises these proposals. The National Conference of Friendly Societies recommends that approved agencies should be established, consisting of bodies of not less than 5,000 persons. These, in effect, would be the larger of the existing friendly societies and the industrial approved societies, and would have most of their present functions. Every insured person would have complete freedom of choice of approved agency. They would be remunerated on a *per capita* basis. The main objections to this proposal noted by the White Paper are: undesirable duplication and competition, and lessening of direct financial incentive to administer social insurance benefits carefully. The National Federation of Employees' Approved Societies support the approved agency plan, but propose that agencies should be conducted as branches of the existing associations of approved societies, and that a statutory committee be set up with representatives of each association and of the Government and an independent chairman, to investigate excessive claims, allegations of maladministration, and other matters. The comment of the White Paper is that the underlying basis of the suggestion is that the presence, in such aggregations, of individual societies giving substantial voluntary sickness benefits would ensure economical administration throughout the whole unit, and that there is little substance in this argument. In any event, it is stated, the largest of the various aggregations proposed would not include any constituent society providing a voluntary sickness benefit.

Workmen's Compensation.

THE sub-title of Pt. II of the Government's White Paper on Social Insurance is "Proposals for an Industrial Injury Insurance Scheme." Among the unsatisfactory features of the present law and practice of workmen's compensation, the foreword to Pt. II notes the practice of paying, in full discharge of liability for what may prove to be a permanent or long-continued loss of earnings, a lump sum which the employer may offer for the sake of simplicity and finality, and the workman may accept for the same reason. Henceforth, it is stated, the Government propose, as part of their extension and recasting of the social insurance system, that provision for disablement or loss of life from industrial injury shall become a social service, administered as a separate scheme, but under the Ministry of Social Insurance. The new scheme departs from the general scheme of social insurance as regards rates of benefit, and is in many respects, assimilated to the war pensions schemes. It will not therefore be unified with the general scheme, but will be a separate scheme. The scheme will cover, broadly speaking, all persons working under a contract of service or apprenticeship, except those under school leaving age. It will not provide for contracting-out schemes. Instead of the liability being on the individual employer, it will be placed upon a central fund, out of which all benefits, both in disablement and fatal cases, and administrative charges, will be paid. The fund will be maintained by weekly contributions from employers and workmen. The present procedure by which claims are made subject to applications for arbitration and appeals to the law courts, will be superseded by a system under which claims will be dealt with by a Pensions Officer, subject to rights of appeal to local tribunals of employers and workmen, and further rights of

appeal to an Industrial Injury Insurance Commissioner, whose decision will be final. The local appeal tribunals will be presided over by independent chairmen with legal qualifications, and will deal with such questions as whether the injury arose out of and in the course of the employment, whether the disablement or death was due to the injury or was due to wilful and serious misconduct, and other questions of "entitlement." Where in a particular case medical issues are involved or are likely to arise, provision will be made for one or more medical practitioners to join the tribunal either as members or in an advisory capacity. The medical assessment for pension, when the workman's condition is considered to warrant it, will be made by a medical board, and it is contemplated that the medical boards of the Ministry of Pensions might be utilised for this purpose. There will be rights of appeal against a final assessment, or in certain cases against an interim assessment, to a tribunal consisting of a chairman of a local appeal tribunal and two medical practitioners. The allowances and pensions will not be based on loss of earnings, as hitherto, but on the degree of disablement. There is to be no provision for commutation of the pension by a lump sum payment. Finally, the White Paper notes that the Government has set up a committee under the chairmanship of Sir WALTER MONCKTON, K.C.V.O., K.C., pursuant to the recommendation of the Beveridge Report that a committee be set up to consider the relation, both in industrial and non-industrial cases, between claims to security benefit and claims for damages in respect of personal injury caused by negligence and a review of the law governing the liability of employers and third parties to pay damages or compensation to workmen, or their legal representatives and dependants, independently of the provision for them proposed to be made in the new scheme.

War Damage: Private Chattels Scheme.

AN interesting point relating to war damage compensation for the destruction of or damage to private chattels was raised by Mr. HUTCHINSON in the House of Commons on 27th September on the adjournment. He drew attention to the fact that under the private chattels scheme a limitation of value was imposed upon any single article where a policy comprised more than one article. That limitation was 5 per cent. of the total value of all the articles insured under the policy, or a sum of £50, whichever was the greater. The owner of a fur coat or a piano might suffer hardship. He had asked a question about it last July and the answer had been that valuable objects should be placed in a safe place, as the object of the scheme was to reimburse people of moderate means for the loss of essential articles. He asked whether every lady who owned a fur coat was expected to put it away in a place of safety and then to go and ask for coupons for something to take its place. There was, in fact, an exception in favour of motor cars, invalid carriages and yachts, and it was illogical that this did not extend to grand pianos, fur coats and radiograms. The PARLIAMENTARY SECRETARY TO THE BOARD OF TRADE replied that the scheme was not an ordinary insurance scheme at all, into which people paid in accordance with the expectation of loss and the premiums balanced the amount which would ultimately be drawn in claims. In the case of the private chattels scheme there would remain a margin which had to be found from the taxpayers' pockets. There had to be a limit somewhere, and those who had put in claims of more than £50 in value had realised the equity of the limitation provision. There was, however, a provision which might be of some little consolation. On 3rd June, 1942, he had stated in the House that if the price level at the date of payment differed materially from that on which compensation was based, while it would not be right in the Government's view to call upon the general taxpayer to find money to pay for additional compensation for the replacement of articles which were not necessary for a reasonable standard of life, they would be prepared to consider, should post-war price levels and other circumstances require it, the adequacy of compensation in the case of the small man. Under this he did not at all envisage the re-examination of the value of individual articles, but if when a claim, settled for £300 in 1941, came to be paid, prices were, say, 25 per cent. higher than they were then, in such circumstances, under this provision, a claimant would receive not £300 but £300 *plus* a sum which would make up to him for the decrease in the purchasing value of money. This would cover both free insurance and premium insurance. The House then adjourned.

Control of Land Use.

MORE was heard about town and country planning when LORD BALFOUR OF BURLEIGH moved in the House of Lords on 27th September to resolve: that the decentralisation, decongestion and redevelopment of our big towns do constitute a primary object of policy of His Majesty's Government. His lordship said that two-fifths of our whole population were in the seven million mark aggregations of population. He said that aggregations over one million led to conditions which were not compatible with the best type of civilisation. He wanted to see the Government express their intentions of directing their policy to the end of checking those aggregations. With regard to compensation, his lordship pointed out that the great difficulty of local authorities before the war was that they could not plan properly and boldly because they felt that they could not foot the bill for compensation. That difficulty would be repeated if the present scheme were put into effect. With regard to development rights, he would say: "Settle, and settle now." Unified ownership, he said, was necessary for redevelopment of some of the "blitzed" areas—and he would prefer to see that land owned, not by the local authorities, but by some body much higher up, perhaps a landholding commission, which would let land, where necessary, to local authorities on a ninety-nine-year lease. The rent should be commensurate with user, and there should be a low rent for land to be used for houses. The MINISTER OF RECONSTRUCTION replied that the recent White Paper on the Control of Land Use represented the common agreement which had been secured between divergent political views. It made it quite clear that the Government believed in securing a properly balanced population so far as industrial development was concerned. What was required was not a master plan, but a central initiative on the general policy, the details to be worked out by the local authorities. It had been found in practice that where compensation had to be dealt with in circumscribed areas and localities planning was delayed. Therefore it was proposed that there should be some central fund into which betterment should be paid and from which compensation should be drawn. LORD ADDISON criticised the statement in the White Paper that "payments received in betterment should, over a reasonable period of years and over the country as a whole, provide a fund adequate to pay fair compensation." The two things, he said, could not be balanced, because one is not realisable for many years after the other, and in fairness it should be paid at once. VISCOUNT SAMUEL was in favour of decentralising the task of planning and said that the Town and Country Planning (Interim Development) Act, 1943, provided for the constitution of enlarged amalgamated or federated local authorities, and we had not heard how far that in fact had been accomplished. The ARCHBISHOP OF CANTERBURY spoke in favour of the control of location of industry. VISCOUNT ASTOR pleaded for more financial help for "blitzed" cities. LORD LATHAM thought that the proposed financial assistance from the Government to "blitzed" and "overspill" areas was quite inadequate. After further debate and a further reply by LORD WOOLTON the motion was agreed to.

Crime and Psychotherapy.

IN view of recent researches of criminologists into the psychology of crime, and the many proposals which are current for reforms in penal treatment, it is interesting to observe the attitude of the higher courts to suggestions which are occasionally made for individual action in the direction of scientific treatment. In England any such recommendations are either met with a sentence of conditional binding over where this is possible in the circumstances, or with an observation, where this is not possible, that the matter must be left to the decision of the prison authorities. These authorities are properly equipped with facilities for hospital treatment in obvious cases, but are not usually provided with facilities for treatment of the more subtle types of mental ailment which do not come within the category of positive insanity. We are indebted to the *Scots Law Times* of 23rd September, 1944, for a short report of a case in the High Court of Justiciary (*H.M. Advocate* v. *Morison*, Sc. L.T. Rep. (1944), p. 308) in which counsel for a person who had pleaded guilty to a number of charges under the Criminal Law Amendment Act, 1885, pleaded that the offences were the result of mental illness. He urged that the modern trend in considering offences by persons who evinced indications of such mental illness was to endeavour to effect a cure while at the same time protecting the public, and the machinery existed under ss. 1 (1) and 2 of the Probation of Offenders Act, 1907, to promote this end. The evidence of two psychiatrists was led as to the prospects of cure and both agreed that no facilities at present existed for giving the necessary treatment in prison. It was contended that the public could best be protected by curing the accused person, and that, on the evidence, a sentence of imprisonment would not be likely to cure the accused. The result would be, that at the end of his sentence the prisoner would be released, still a potential danger to the public. The proper course, it was urged, would be to release him on condition that he entered into a recognisance to put himself under the supervision of a psychiatrist. In passing sentence of eighteen months' imprisonment, the Lord Justice-Clerk (COOPER) said that there was little to differentiate the quality of the offences in the case from many others which had come before the court. If he thought it justifiable to approach cases of this kind from the purely medical standpoint adopted by the witnesses, and with a single eye to the possible rehabilitation of the offender, he might be prepared to try some such experiment as had been suggested, which, however, was unprecedented in that court. He did not feel justified in so doing. His duty was to administer the law as it was, and to apply the provisions which the law had made for cases of that kind. In the eyes of the law, the offences in question were crimes, requiring to be punished, as other like offences were punished, not only from the standpoint of the offender, but with the object of vindicating the law, of protecting the community, and of deterring others. He would follow the course taken in the case of *Loggie* (15th July, 1938, High Court, Edinburgh, unreported). He would direct the evidence which had been taken to be laid before the prison authorities for such action, if any, as lay within their power.

A Conveyancer's Diary.

Drake *v.* Bedfordshire County Council.

In *Drake* v. *Bedfordshire County Council* [1944] K.B. 620, the plaintiff sued under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act, 1934, as widow and executrix of one Ernest Drake, who died on 4th October, 1942, from the consequences of his falling on the previous evening, from a raised footpath, through some defective railings on to a main road. The writ was issued on 15th March, 1943, a date well within the period of twelve months from the death limited by Lord Campbell's Act, and also within twelve (or indeed six) months of the cause of action, viz., the fall. The defendants pleaded, however, that they were protected by the Public Authorities Protection Act, 1893. On the face of it this contention seems remarkable at the present date, because the relevant parts of the Act of 1893 were repealed by the Limitation Act, 1939, and replaced by s. 21 of that Act, which also introduced some quite different wording. The arguments of counsel are not reported, but it appears from the judgment that they must have been somewhat as follows. Section 33 of the Act of 1939 provides that nothing in that Act is to revive a cause of action which was already barred when the Act came into force. (This section is not actually mentioned anywhere in the report, but the case would be unintelligible apart from it.) But the present action was barred before the Act of 1939 came into force because the Act of 1893 provided that actions against public authorities should not be brought except " within six months next after the act, neglect or default complained of." In this case the neglect complained of was the creation of a public nuisance at the place where the deceased fell, through the failure to repair the railings after they had been broken by an accident during the summer of 1937. That date being much more than six months before the coming into force of the Act of 1939, these proceedings were already out of time when that Act came into force and were thus not revived.

This was a rather surprising contention, because it involved the propositions (*a*) that a cause of action can be lost under the Act of 1893 before it accrues, since the cause of action in nuisance is the damage and not the creation of the nuisance (see *Backhouse* v. *Bonomi* (1861), 9 H.L.C. 503); and (*b*) that a public authority can, in effect, prescribe for a right to commit a nuisance by maintaining the nuisance for six months (or presumably twelve months under the Act of 1939 which extends the period). But it had been recognised under the old law that such an argument was not entirely impossible (see *per* Scrutton, L.J., in *Huyton and Roby Gas Co.* v. *Liverpool Corporation* [1926] 1 K.B. 146, 154, where, however, the learned lord justice suggested that the absurdity might be evaded by interpreting the phrase " neglect complained of " as having reference to a neglect of which one can legally complain, i.e., a cause of action).

However, the old Act also provided that " in case of a continuance of injury or damage " the action might be brought within six months of the ceasing thereof. In this connection the learned judge is reported as having observed that " of course, the time runs from the negligent act and not from the resulting damage (*Freeburn* v. *Leeming* [1926] 1 K.B. 160"). This observation must surely have been made *per incuriam*. Its direct relevance to the present case is not obvious, as the learned judge had expressly held that the state of the railings was a public nuisance, so that the action was not one for negligence. Moreover, *Freeborn* v. *Leeming* seems scarcely to be authority for such a proposition, since it was concerned with proceedings against a medical man for a wrong diagnosis, the damage from which begins to accrue simultaneously with the negligent act, so that such a case is on quite a different footing from one where a dangerous drop is created down which someone falls five years later. But the learned judge went on to hold that the danger continued from the time of its creation to the date of the accident, so that the action was still not barred when the Act of 1939 came into force.

One of the curious things about *Drake* v. *Bedfordshire County Council* is that there is no mention at all of s. 21 of the Act of 1939. Yet if the action was not already barred when that Act came into force, the defence that the defendant was a public authority had still to be tested under that section. In fact, the defence seems to have been treated as arising exclusively under the Act of 1893. But s. 21 of the Act of 1939 has distinct differences of wording from s. 1 of the old Act. It follows the general scheme of the new Act in providing that no action (against a " public authority ") shall be brought " unless it is commenced before the expiration of one year from the date *on which the cause of action accrued* ": the reference to " act, neglect or default " is still used in defining the class of case to which the section is to apply, but not with reference to the point from which the period of limitation is to be calculated. The provision as to continuance is no longer that " in case of a continuance of injury or damage (the action may be brought) within six months next after the ceasing thereof," but that " where the act, neglect or default is a continuing one, *no cause of action in respect thereof shall be deemed to have accrued* . . . until the act, neglect or default has ceased." Under this wording the position would be that so long as the public nuisance is maintained time in respect of the nuisance as such does not run at all for the purposes of s. 21. And, in any case, since the cause of action in this actual case was the damage caused by the deceased's fall, the twelve months period under s. 21 would have run from the date of the fall. The fact that once one is injured by a nuisance or negligence one continues to be the worse for it, and perhaps grows worse still, does not operate to extend the time. It did not do so under the old law (*Carey* v. *Metropolitan Borough of Bermondsey* (1903), 20 T.L.R. 2); and it certainly does not do so now with the disappearance of the phrase " continuance of *injury or damage* " and the substitution of " where the *act, neglect or default* is a continuing one " (the italics are, of course, mine throughout).

I have discussed this side of the case at some length because I do not think that the changes in the law are generally appreciated, and the report does not seem to make them clear. But, actually, the defence of s. 1 of the Act of 1893 was rejected on quite another ground. With reference to this point, we must examine the facts a little further. The defendants had in the past been the highway authority in respect of the road on to which the deceased fell. But it was one of those roads which vested in the Minister of Transport under the Trunk Roads Act, 1936, and the Minister had become the highway authority on 1st April, 1937. He had, as a matter of fact, made agreements with the defendants under which they were to act as his agents for carrying out his duties as highway authority, he undertaking to indemnify them. The accident in which the railings were damaged occurred at a date when the Minister was the highway authority: in pursuance of their agreement with him, the defendants " tidied up " the remnants. But they left the place in a dangerous state, and so it continued. Whatever might have been the position if this state of affairs had been created by the highway authority acting as such (and it follows from the earlier part of this article that in my view time would not have begun to run till the deceased's fall), the defendants were unable to bring themselves within s. 21 at all. (The report proceeds on the basis that the Act of 1893 is relevant here too: but in this instance there is no difference between the two provisions.) The protection of s. 21 is given to persons in respect of proceedings " for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority." The defendants were " merely contractors carrying out a contract," and so were not specially protected by the statute. This whole subject was discussed in the leading case of *Bradford Corporation* v. *Myres* [1916] 1 A.C. 242, and in numerous less important cases. In *Tilling, Ltd.* v. *Dick Kerr & Co., Ltd.* [1905] 1 K.B. 562, a private contractor working for a public body was refused relief, and there is no difference in principle between that case and one in which one public body acts as contractor for another. The important thing to remember is that the protection is only given to a person performing a statutory or public duty laid on that person. It does not protect persons who happen to be agents for, or contractors with, a person who would be protected. Still less does the enactment protect certain defendants in everything they do: the Bedfordshire County Council is undoubtedly protected in respect of many of its activities. But it would not be so, for example, in exercising rights which it may have merely as incidents to the ownership of real property, quite apart from any public function with which it is charged. Thus the defendant burgh authority in *McPhie* v. *Provost, Magistrates and Town Council of Greenock* (1904), 7 F. (Ct. of Sess.) 246, was not protected in respect of proceedings upon an arrangement for the letting of its town hall, a transaction not having any connection with its public duties. It follows that if a county council acts as contractor to the Minister, the public duty being on the Minister, the county council is no more protected than a private contractor would be. Such a decision is certainly welcome, because the enactment is one tending to inflict serious hardship on the citizen (especially in the surviving portion of the Act of 1893, which gives a successful protected defendant his solicitor and client costs). But one swallow does not make a summer, and it would be very desirable that an authoritative committee should inquire into the continued expediency of s. 21. It seems to be contrary to first principles that some defendants should have the scales weighted in their favour just because they are sued for acts done by them as public servants: this matter was, I seem to remember, stressed in Mr. Churchill's recent letter to the Italians on the elements of liberty.

Wills and Bequests.

Mr. E. M. Awdry, solicitor, of Chippenham, left £12,373, with net personalty £7,344.

Mr. W. C. Blandy, retired solicitor, of West Malvern, left £19,107, with net personalty £8,638.

Mr. E. W. Humphreys, retired solicitor, and former Official Receiver, of Nottingham, left £5,523, with net personalty £5,439.

Mr. Henry Campbell Jenkins, barrister-at-law, of Hove, left £53,348, with net personalty £47,170.

Mr. B. Leach, solicitor, of Oxted, left £31,550, with net personalty £28,509.

Landlord and Tenant Notebook.

"The Original Contract of Tenancy."

SECTION 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, may be said to enshrine, with the words of the title of the statute, its main object, the rest of the Act (including the provisions conferring security of tenure) being ancillary thereto. The section, as applied to 1939 control houses, runs: "Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies . . . has been, since 1st September, 1939, or is hereafter, increased, then, if the increased rent exceeds the standard rent by more than the amount permitted under this Act . . . the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant . . ."

Section 15 (1) of the same Act says: "A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act . . ."

"What happens when the rent reserved exceeds the amount payable under an earlier agreement but does not exceed the standard rent?" briefly expressed a question which has very much exercised the minds of the judges lately, so that they have been virtually driven to indulge in hair-splitting while pointing out that that was what the Increase of Rent, etc., Restrictions Acts told them to do.

Recent decisions show that the question now resolves itself into this: do the facts make the case a "*Phillips* v. *Copping*" one or a "*Bryanston Property Co.* v. *Edwards*" one.

Phillips v. *Copping* [1935] 1 K.B. 15 (C.A.), decided (overruling *Dufty* v. *Palmer* [1924] 2 K.B. 35) that on the termination of a contractual tenancy of a controlled house, let at a rent less than the standard rent, the landlord was entitled to let it at the standard rent. The landlord in that case let a house, which had a standard rent of £91, at £47 10s. for three years from 1916, the agreement giving the tenant an option for a further three years at £55. In 1922 he served her with a notice interpreted as increasing the rent to £91, and in the proceedings claimed rent at that rate while she counterclaimed for excess payments. Argument centred round the effect of s. 1 as set out above, with some reference to ss. 2 and 3 (permitted increases, and notice of increase). Scrutton, L.J., taking as he so often did a general view of the situation, pointed out that substantially the object of the legislation was to keep rents at their pre-war level, and that to raise the rent to the standard rent merely carried out the idea of the Act and did not violate s. 1. Greer, L.J., said s. 1 recognised the right to raise rent to the standard rent level. Maugham, L.J., took the same view, adding that s. 2 did nothing to limit increases by reference to what was paid at the date of the notice, and that s. 3 (2), which prescribes a form of notice, referred only to the increases permitted by s. 2.

It may be significant that s. 15 is not as much as mentioned in the headnote or the sub-titles of the report, but it was the basis of part of the tenant's argument, and both Greer and Maugham, L.JJ., dealt with the point in their judgments. "The section was meant to preserve the terms of the existing lease subject to the provisions of the Act as to rent," said the former, while Maugham, L.J., without actually emphasising the "so far as the same are consistent with the provisions of this Act," held that the section did not extend to the case of the payment of rent and pointed out that if it did, s. 2, the permitted increases section, would be rendered nugatory.

In *Bryanston Property Co., Ltd.* v. *Edwards* [1944] 1 K.B. 32 (C.A.), a flat had been let (its first letting ever) in 1941 on a quarterly agreement. The reddendum named £275 a year. A later clause said "So long as the present state of war shall exist . . . the landlord will allow the tenant to deduct from the rent hereby made payable the sum of £85 per annum . . ." In June, 1942, the landlords gave a quarter's notice determining the tenancy at Michaelmas, and in November gave notice raising the rent, as from Christmas, to £275 per annum. In the proceedings two questions were raised: was the standard rent £275 or £190; if the former, was the tenant still entitled to the reduction.

Lord Greene, M.R., and MacKinnon, L.J., held that the standard rent was £275 because the dwelling-house was let at a progressive rent, so that the proviso to s. 12 (1) (*a*) applied; du Parcq, L.J., because there was but a temporary reduction, analogous to one allowed while the landlord completed repairs. But it is, of course, in the distinction drawn between the facts before the court and those of *Phillips* v. *Copping* that we are now mainly interested.

The observations in the older case were, according to Lord Greene, M.R., limited to the question whether s. 15 had the effect of carrying the contractual *obligation to pay rent* over into the statutory tenancy. In the case before him the landlord increased the rent to a figure which was both the standard rent and the figure named in the agreement. The right which the tenant had possessed with regard to *precisely the same rent* under the tenancy agreement, being a provision whereby the tenant could satisfy his obligation to pay the higher rent by paying a lower rent, was truly a term of his tenancy. MacKinnon, L.J., considered that there was no inconsistency between this term and the provisions of the Act.

Having drawn the distinction, the Court of Appeal was called upon to apply it twice within a fortnight in *Capital and Counties Properties, Ltd.* v. *Butler* [1944] W.N. 186 (C.A.), and *Oxley* v. *Regional Properties, Ltd.* [1944] W.N. 190 (C.A.). In the former, a house with a standard rent of £120 a year was let by the plaintiffs to the defendant in August, 1940, for one year at £95 and then from month to month during the continuance of hostilities, after which the rent was to be £114 a year. In April, 1943, they served with notice to quit on 1st June and wrote that he could remain in possession after that date on paying £120 a year. It was held that this was a *Phillips* v. *Copping* case, for the rent clause was "a pure reddendum" and nothing else: the decision in *Bryanston Property Co., Ltd.* v. *Edwards* was "of a very special kind," the special term for authorising deduction during the war being applicable to the statutory tenancy.

But *Oxley* v. *Regional Properties, Ltd.*, was held to have been rightly classified as a "*Bryanston*" case. Here the house was let at the standard rent, but subject to a special provision by which the landlord credited the tenant's account with a small additional sum every time he paid the (monthly) rent within fourteen days of it falling due. The landlord having determined the contractual tenancy, the tenant contended that the provision in question was a term of the original contract and one of the terms of his statutory tenancy. It was held that it was indeed a "separate and independent" term, by which the tenant could get a bonus on punctual payment, and not part of the reddendum.

One of the arguments advanced on behalf of the landlords in this case was that "original contract of tenancy" meant the contract of tenancy which determined the standard rent, not the contract immediately preceding the statutory tenancy. This was rejected, and the court went on to observe that the tenant might otherwise find himself bound by the terms of an earlier tenancy which might be fifty years ago, quite inappropriate to this case, and the mere existence of which was quite unknown to him.

This reasoning can be said to emphasise the importance of the distinction between "pure reddendum" and "terms consistent with the provisions of the Act": for the court has itself commented on the position under which a maximum rent may be fixed by reference to earlier tenancies of which the parties may not have been aware. And while the fine distinction is, as the court observed, inevitable, it will not always be easy to say under which head a particular case falls. Suppose, for instance, that the landlords in the *Bryanston* case had raised rent, not to £275, but to £270: would the tenant, being unable to allege that this was "both the standard rent and the rent named in the agreement," be able to claim the £85 deduction?

WAR-TIME RESTRICTIONS ABOLISHED.

The following restrictions, with which the Home Office and Ministry of Home Security were concerned, have been totally abolished:—

The Control of Maps Orders prohibiting the acquisition of large-scale maps without a licence,

Defence Regulation 8 (3A), prohibiting the unauthorised possession of wireless receiving apparatus in road vehicles.

The Regional Commissioners (Powers of Detention) Orders made under Defence Reg. 18BB, empowering Regional Commissioners to direct the detention of suspects.

The Aliens (High Frequency Apparatus Restriction) Order, 1940, which prohibited enemy aliens from having high frequency apparatus without the permission of the Secretary of State.

The Aliens (Protected Areas) Orders in so far as they declared areas at High Wycombe, Leighton Buzzard, Northampton, and Stanmore and Northwood to be Aliens Protected Areas.

Part of the Aliens (Movement Restriction) Order, 1940, including the obligation on occupiers of premises to report to the police particulars of foreigners staying in the premises.

Liberation of racing pigeons without permission from the police under Defence Reg. 9 (2).

The Vessels on Inland Waters (Immobilisation) Order, 1940, which required the immobilisation of unattended vessels on any inland waters.

The Motor-Vehicles (Control) Order, 1940, requiring the immobilisation of unattended motor-vehicles.

Restrictions under Defence Reg. 16A on visits to or residence in certain coastal areas (known as the Visitors' Ban); all curfew restrictions; requirements (which applied only in certain areas) upon owners of unlicensed cars to deposit car parts with the police.

The following restrictions have been rendered less onerous:—

Control of High Frequency Apparatus Order; Removal of Direction Signs Orders; Aliens (Movement Restriction) Order, 1940; Aliens (Firearms, &c., Restriction) Order; the Lighting (Restrictions) Orders made under Defence Reg. 24; Restrictions imposed under Defence Reg. 16A; the Camping (Restrictions) Order, 1940.

Fire guard duties and civil defence duties have also been considerably relaxed, and exemptions from the restrictions on foreigners have been granted to certain classes of persons.

To-day and Yesterday.

LEGAL CALENDAR.

October 2.—On the 2nd October, 1913, Maître Henri Robert took the oath as Batonnier of the Paris Bar immediately after the annual ceremony of opening the Law Courts. The position, which is one of high honour always occupied by a distinguished advocate, approximates to the office of Dean of the Faculty in Scotland and has no true counterpart in England. He is the representative of his brethren at the bar and their official defender, exercising over them a moral authority, checking breaches of etiquette, reconciling differences and extending to all his protection, his assistance and his advice.

October 3.—On the 3rd October, 1746, there opened at York the trials of the prisoners accused of having participated in Prince Charlie's rising. On that day nine pleaded guilty and five pleaded not guilty, but were convicted on trial. Of these, James Reid, a piper, was recommended by the jury to mercy, as was also David Ogilvie on the ground of his youth.

October 4.—On the 4th October, 1746, the court continued dealing with the rebels. Twenty-one pleaded guilty and only four pleaded not guilty. Of these, one, John Long, was acquitted. He established that he was only a menial servant, assistant to a Mr. Stratton, who had employed him to carry medicines to Carlisle Castle, and that he did not act as surgeon's mate in the rebel army. The other three were convicted: James Sparkes, who had gone a mile and a half out of Derby to meet the insurgents and conduct them to their quarters in the town; Michael Brady, a sergeant in the Manchester Regiment, who behaved with great insolence in the course of his trial; and James McAuley. So the cases went on from day to day and in all seventy men were condemned to death.

October 5.—On the 5th October, 1773, "a sergeant of the third regiment of Guards who . . . was tried by court martial, for enlisting men for the Government's service and afterwards enticing them to enter into that of the French, and sentenced to be shot, was reprieved and ordered to receive 900 lashes on the Parade, a punishment thought by many more terrible than death itself."

October 6.—Sir James Hales became a Justice of the Common Pleas in the reign of Edward VI and the office brought him more trouble than comfort. He made an enemy of Bishop Gardiner by sitting as one of the judges who pronounced sentence of deprivation against him. The attempt to place Lady Jane Grey on the throne brought him an embarrassment from which he emerged with credit, for, when called on by the Duke of Northumberland to join the other judges in authenticating the instrument whereby the succession to the Crown was to be changed, he bravely refused, declaring the proposal unlawful and unjust. Yet he was a loyal Protestant, and immediately afterwards, in charging the grand jury at the Kent Assizes with regard to some indictments presented against persons charged with nonconformity, he plainly pointed out how the law actually stood under the statutes relative to religion then in force. In spite of this, Queen Mary granted him a new patent in the Court of Common Pleas. But when on the 6th October, 1553, he came to Westminster Hall to take his oath of office before Bishop Gardiner, now Lord Chancellor, he found himself harshly received. Though he justified his conduct and declared his firm intention to support the Queen and the law but at the same time to adhere to his own religion, the bishop refused to administer the oath to him. Shortly afterwards he was arrested and kept in prison for several months, being released about April, 1554, but in the course of the following year despondency overcame him and, while staying at his nephew's house at Thanington near Canterbury, he drowned himself.

October 7.—Writing from Taunton on the 7th October, 1685, Sir Charles Lyttleton wrote of the executions following the Bloody Assizes. He said that as they still went on daily in the county, the country looked like a shambles by reason of the quarters displayed everywhere. He added: "Those who suffered here were so far from deserving any pity, at least most of them, and those of the best families (unless, to speak more charitably, it be most grievous) that they showed no show of repentance, as if they died in an ill cause, but justified their treason and gloried in it."

October 8.—A deodand was a chattel forfeited because it had caused the death of a human being. In the early Middle Ages it was taken for the benefit of the Church or the poor, being applied by the Crown to pious or charitable uses. In course of time the Crown came to take the benefit of the confiscation and later still a compromise emerged whereby the value only of the thing was claimed. This opened the door to ingenious refinements. Such was the case when during the riotous popular rejoicings over the election of John Wilkes as Lord Mayor of London in 1774, a man was run over by the state coach and killed. A coroner's jury sitting on the 8th October found a verdict of accidental death; then to avoid declaring the whole costly vehicle a deodand they found that the actual cause of the death was the near fore-wheel which they valued at 40s. Deodands were finally abolished by statute in 1846.

Town Planning a Century Ago.

The test cases of the power stations with which it has been proposed to overshadow Durham and Lincoln and of the hydro-electric schemes in the Highlands suggest that it will be a hard struggle to establish that "post-war planning" does not simply mean giving heavy industry a free hand to do whatever seems good to it. The problem is not essentially novel, and a letter of Lord Cockburn, the great Scots judge, to the Lord Provost "on the best ways of spoiling the beauty of Edinburgh" contains much good sense, relevant still even after the passage of a century. He says that there are undoubtedly "some who see nothing valuable in a city except what they think convenience. To these people taste, or at least the abstinence from desecration which taste sometimes requires, is ridiculous and odious. They hold a town to be a mere collection of houses, shops and streets; and that provided there be enough of these, duly arranged on utilitarian principles, all anxiety as to whether the result shall be a Bath or a Birmingham, is mere folly and affectation. If it were proposed to erect a distillery on the summit of the Calton Hill, or to dignify the top of Arthur Seat with a pillar . . . these schemes would certainly find supporters. And if these supporters could connect their schemes with any particular object of their own, it is mortifying to think what a number of adherents they might get; and by what a quantity of confident and plausible nonsense their plan would be defended." He turns to Perth: "One would have thought that there was no Perth man (out of the asylum) who would not have rejoiced in his unstained tranquility, in the delightful heights that enclose him, in his silvery Tay, in the quiet beauty of his green and level Inches. Yet it is said that some of them actually long for steam engines on Kinnoul Hill, and docks and factories and the sweets of the scouring burn. But I do not believe this. It is incredible." The letter is long and detailed and deserves careful study. In 1845, Lord Cockburn noted in his journal the happenings at the estate which had been acquired to become the Dean Cemetery: "How the savages were smashing the wood to-day as if for mere pleasure! I thought that venerable trees and undying evergreens were exactly what a burial ground would long for. But here they are in perfection; plenty hollies and yews apparently a century old; and how did I see them treated? As a drove of hogs would treat a bed of hyacinths. Not a planner there seems to be in Scotland who has any other idea but that whatever piece of ground he is entrusted to make the most of, must first be reduced to absolute flatness and barrenness. If one of these fellows had been required to build a house for Adam in Paradise, he would have begun by making the garden as level and as raw as a new fir table."

Parliamentary News.

HOUSE OF COMMONS.

Housing (Scotland) Bill [H.C.].
Read Third Time. [29th September.

Housing (Temporary Accommodation) Bill [H.C.].
Read Third Time. [27th September.

India (Miscellaneous Provisions) Bill [H.L.].
Read Second Time. [27th September.

Unemployment Insurance (Increase of Benefit) Bill [H.C.].
To increase the rates of benefit payable under the Unemployment Insurance Acts, 1935 to 1940.
Read First Time. [27th September.

QUESTIONS TO MINISTERS.

Antiquated Laws.

Sir Thomas Moore asked the Attorney-General whether his attention has been called to recent prosecutions under antiquated Acts of Parliament which are inappropriate to war-time conditions, and whether he proposes to take any action to prevent the law being thus brought into disrepute.

The Attorney-General: If my hon. and gallant friend feels that some particular Act or Acts are antiquated and inappropriate to modern conditions and will let me know, I will certainly consider his representations. The Act may be the concern of one or other of the departments, in which case my hon. friend would have to make his representation to the Minister concerned. [27th September.

Poor Persons.

Sir Leonard Lyle asked the Attorney-General whether he will consider extending the activities of the poor persons committees to county court cases.

The Attorney-General: A committee appointed by my noble friend the Lord Chancellor under the chairmanship of Lord Rushcliffe is at present considering the facilities available generally for giving legal advice and assistance to poor persons. The terms of reference are sufficiently wide to allow the committee to consider the extension referred to. [27th September.

The Board of Trade announce that all policies under the Business Scheme which are in force on 30th September, 1944, will be extended until 31st December, 1944, without further payment of premium or further action on the part of the policy-holders. For additional insurance under the Business Scheme as well as for new insurance under the scheme, the rate of premium has been reduced to 1s. 8d. per cent. for the three months 1st October to 31st December, 1944, with a minimum premium of 5s.

Obituary.

SIR WILLIAM MULOCK.

The Rt. Hon. Sir William Mulock, K.C.M.G., LL.D., who after a distinguished career in Canadian politics filled the high judicial office of Chief Justice of Ontario, died on Sunday, 1st October, aged one hundred.

MR. W. R. EDMUNDS.

Mr. William Rees Edmunds, solicitor, of Llanelly, died on Saturday, 30th September. He was admitted in 1900.

MR. F. C. PAYNE.

Mr. Frederick Charles Payne, solicitor, of Messrs. Payne and Payne, solicitors, of Hull, died on Friday, 15th September, aged sixty-eight. He was admitted in 1901.

MR. F. J. PRESS.

Mr. Frederick John Press, solicitor, of Messrs. Clarke, Sons and Press, solicitors, of Bristol, died on Tuesday, 26th September. He was admitted in 1898.

Societies.

THE WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON.

It has been our practice in the past to report the annual general meeting of the Company at which the report was considered, but this year, owing to the reconstitution of the Company, no general meeting has been held since that at which the former statutory Company was wound up in April last. The following is the report of the Court of Assistants for the year 1943–44 :—

The outstanding event of the past year was the winding up of the former statutory Company on the re-incorporation of the Company as a City Livery Company under letters patent under the mayoral seal, which brought to fruition the hopes of the original founders and successive members of the old Company since its incorporation thirty-five years ago. Only one other livery company had been created since 1709.

The letters patent were formally handed over to the Master and Wardens at a ceremony at the Mansion House on 24th May, 1944, which was followed by a luncheon given by members of the court to the Lord Mayor and Aldermen at which there were a number of distinguished guests, including the Master of the Rolls and the Attorney-General.

The constitution of the Company as a City Livery Company had been given considerable publicity in the Press, and was an incentive to existing members to endeavour to extend its membership and increase its funds so that the Company might in time take its place as one of the great Livery Companies of the City of London.

The area from which members could be drawn had been extended by byelaw 1 of the new constitution to one mile from the Bank of England in place of the former three-quarters of a mile laid down by the articles of association of the statutory Company.

A separate circular letter had been addressed to freemen of the Company regarding the steps to be taken to enter the Livery.

The second outstanding event was the increase authorised in solicitors' remuneration for which the Court had pressed for some time. A memorandum by the Court on the subject of remuneration had received wide publicity, and the Court would not cease to press for further consideration of those points in it which had not yet been conceded, although it was probable that it would not be possible to deal with some at any rate of these until after the war.

In particular, the Court considered that the upper limit in the scale under Sched. I was a gross injustice to the profession.

In July, 1943, the Master entertained the members of the Court to dinner at the Holborn Restaurant. Amongst the distinguished guests who were present were the Master of the Rolls, the Attorney-General, Sir Henry Dale, O.M. (the President of the Royal Society), the Recorder of London, Mr. (now Sir) Ernest Bird, Sir Ernest Benn, Sir Albion Richardson, C.B.E., K.C. (Treasurer of Gray's Inn), and Mr. H. St. John Field, K.C. (Honorary Counsel to the Company).

Since the annual general meeting of the statutory Company in May, 1943, twenty new members had been elected, and the total membership of the Company was now 235.

The Court recorded with great pleasure the honour of knighthood conferred on Past Master Sir Stanley Pott during his period of office as President of The Law Society in recognition of his many public services.

The Court had suffered a severe loss during the year by the deaths of three of its Past Members, namely, Past Master G. L. F. McNair, Past Master Knox and Past Master Fraser. It had also, with regret, lost Past Masters Armstrong and Roscoe and Mr. A. G. Allen, D.S.O., M.C., by resignation. The Court wished to place on record its sincere appreciation of the services rendered to the Company by these gentlemen.

There had been twelve meetings of the Court of Assistants during the year, and the Court desired to express its renewed appreciation of the kindness of the Grocers' Company in putting its Court Room at the disposal of the Company.

Among the matters of professional interest (apart from the question of solicitors' remuneration referred to above) considered by the Court, and its committees, during the year, the following might be mentioned :—

(*a*) *Company law amendment.*—At the request of The Law Society the Court prepared a memorandum of recommendations. Some of these were endorsed in a memorandum by the Council of The Law Society submitted to the Cohen Committee (published on p. 33 of the Society's annual report), particularly the suggestion of a code of powers and duties of receivers, the compulsory disclosure to shareholders of compensation paid to directors for loss of office, the position of creditors unpaid within one year of a resolution for voluntary winding up, and the consent of a mortgagee to entry of satisfaction in the register.

(*b*) *Mayor's Court Rules.*—The Court considered a draft of these rules, which had been submitted to it on the instructions of the Law and City Courts Committee of the corporation, and had no observations to make thereto.

(*c*) *New draft Solicitors' Accounts Rules and Solicitors' Trust Account Rules.*—A memorandum on this matter was sent to The Law Society and subsequently a deputation of members of the Court discussed the matter with a committee of the Council of The Law Society. The rules had now been made, and come into force on 1st January, 1945. Copies appeared on p. 56 of the Appendix to The Law Society's Annual Report and the attention of members was drawn to them.

(*d*) *Rent control.*—The views of the Court on the question of rent control were sought by The Law Society, and a memorandum thereon was sent by the Court to the Society drawing attention to the hardship on landlords of premises let at rents including services or at " emergency " rents below the true rents, and urging some permitted increase in all standard rents with a greater increase in cases where the rent included services. It also suggested a right of appeal to a rent court. The comprehensive memorandum by the Council of The Law Society (printed on p. 49 of its annual report) adopted the suggestion of an increase in the standard rent (including the further increase in the case of services), but as regards exceptional lettings, which it would on equitable grounds be desirable to treat specially, the Council felt difficulty in suggesting any means of defining such cases sufficiently accurately. It did not endorse the suggestion of rent courts, but suggested certain improvements in the existing county court procedure.

(*e*) *Schedules to the Succession Duty Act.*—The question of these being now out of date was taken up with The Law Society, who informed the Court that the schedules were under consideration by actuaries.

(*f*) *Guildhall Library.*—A memorandum was sent to all members of the statutory Company with a request to present to the library any volumes of Law Reports and Statutes which they could spare. Although considerable numbers of volumes were presented by certain members of the Court the response to the circular had not been encouraging.

(*g*) *Beveridge Report.*—A memorandum by the Secretary of The Law Society on the question of the proposals concerning workmen's compensation and liability for negligence was considered and the Society was informed that the Court approved its recommendations. Further questions which had arisen were still under consideration by the General Purposes Committee of the Court.

(*h*) *British Red Cross. Prisoners of War Educational Section.*—A donation of £10 10s. was sent for the purchase of law books for prisoners of war.

Members did not appear to take full advantage of the privilege of obtaining books on loan from Law Notes Lending Library, 25 and 26, Chancery Lane, free of charge. Only 117 members borrowed books (to the value of £642) during the year.

The City of London Solicitors' Company Prize, the Grotius Prize and the Alfred Syrett Prize had again not been awarded, The Law Society having resolved not to award any prizes during the continuance of the war. The golf challenge cup was not competed for during the past year.

The name of Mr. R. M. Simon (who has been serving overseas for the past four years) had been added to the list of members serving with H.M. Forces. The Company would be glad to hear of any other members entitled to be included in this list.

In addition to Past Masters McNair, Knox and Fraser, the Company had lost the following members by death, viz., Alderman Sir George Godfrey Warr, Mr. Deputy H. Roper Barrett, Col. J. Josselyn, C.M.G., D.S.O., O.B.E., Mr. Oswald S. Hickson, and Mr. Leslie Farnfield.

Freemen of the Company who take up their Livery are reminded that they become eligible for election to the City Livery Club. The Clerk of the Company would be pleased to supply particulars.

At a Court of Aldermen on 19th September the following applications from members of the above Company for admission to the Freedom of the City were granted : Messrs. A. F. Steele, M.B.E., P. R. Johnston, F. W. Pope, D. C. Tewson, F. B. Aglionby, G. T. Saunders-Jacobs, P. C. Fawcett, G. I. O. Briggs, J. H. Forbes, S. R. Hill, E. H. Hazel, R. H. Hazel, M.C., R. L. Pyman, C. W. Tee, L. C. Maddison, R. B. Worley, M. R. C. Scott, J. Howgate, H. M. Cohen, J. W. Murphy, H. H. Bowyer, and A. M. Oppenheimer.

The following applicants, already free of the City, to be recorded in the City of London Solicitors' Company, were approved : Messrs. W. A. Crocker, J. T. Plowman, H. M. Jones, R. T. Outen, W. A. Bright, and A. L. Samuell.

The usual monthly meeting of the directors of the Law Association was held on the 2nd October. Present : Mr. C. A. Dawson in the chair, Messrs. Guy H. Cholmeley, Ernest Goddard, G. D. Hugh Jones, Frank S. Pritchard, John Venning and Wm. Winterbotham. A sum of £381 5s. was voted in relief of deserving applicants and other general business was transacted.

According to a note in *The Times*, the first application on behalf of the Attorney-General in any court in England to prohibit a retailer convicted three times for price regulation offences from trading has been made at Norwich. The magistrates made an order prohibiting Partul Chander Mulhotra, in business at the provision market and St. Gregory's Alley, Norwich, from carrying on that business or any branch of it for two years. Notice of appeal was given.

Notes of Cases.

COURT OF APPEAL.

Curzon Offices, Ltd. *v.* Inland Revenue Commissioners.

Scott, Goddard and du Parcq, L.JJ. 11th April, 1944.

Revenue—Stamp duty—Conveyance or transfer on sale—Sale of leasehold premises by one company to another—Transferor company owning more than 90 per cent. of shares of transferee company—Guarantee by third company of part of purchase price—Remainder of purchase price remaining on mortgage of premises to transferor company—Agreement between third company and transferor company to buy all the shares in the transferee company—Statutory provisions that no ad valorem stamp duty payable where transaction between companies, one of whom owns over 90 per cent. of shares of other—Subsequent statutory provisions making ad valorem duty payable where a non-associated company provides consideration for transfer—Third company held to have provided whole consideration—Ad valorem stamp duty payable—Stamp Act, 1891 (54 & 55 *Vict. c.* 39), *s.* 1, *Sched.* I—*Finance Act*, 1930 (20 & 21 *Geo.* 5, *c.* 28), *s.* 42—*Finance Act*, 1938 (1 & 2 *Geo.* 6, *c.* 46), *s.* 50.

Appeal from the judgment of Macnaghten, J.

This was an appeal by the C company from the decision of Macnaghten, J., confirming the direction of the Commissioners that an *ad valorem* stamp duty was chargeable under the heading "conveyance or transfer on sale" within the meaning of Sched. I of the Stamp Act, 1891, on a transfer dated 30th March, 1942, whereby the H company, as beneficial owner, transferred to the C company certain leasehold property for the consideration of £568,078. Before the sale was effected the R company agreed to buy the whole of the share capital of the C company which was owned by the H company. It was also arranged that £329,674 of the purchase price should be left on mortgage of the property to the H company and that the remaining part of the purchase price, namely, £238,404, should be paid in cash by the C company, who had borrowed it from a bank on mortgage and under the guarantee of the R company. As the H company at the date of the transfer owned all the shares of the C company, no stamp duty under the heading "conveyance or transfer on sale" would have been chargeable by reason of the provisions of s. 42 of the Finance Act, 1930, were it not for the provisions of s. 50 of the Finance Act, 1938. The relevant parts of s. 42 of the Act of 1930 provide as follows: "(1) Stamp duty under the heading 'conveyance or transfer on sale' . . . shall not be chargeable on an instrument to which this section applies . . . (2) This section applies to any instrument as respects which it is shown to the satisfaction of the Commissioners of Inland Revenue—(*a*) that the effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability to another such company; and (*b*) that either (i) one of the companies is beneficial owner of not less than 90 per cent. of the issued share capital of the other company . . ." The relevant provisions of s. 50 of the 1938 Act are as follows: "(1) Section 42 of the Finance Act, 1930 (which relieves from stamp duty any instrument the effect whereof is to convey or transfer a beneficial interest in property from one associated company to another (in this section respectively referred to as the 'transferor' and 'transferee') shall not apply to any such instrument, unless it is shown to the satisfaction of the Commissioners of Inland Revenue that the instrument was not executed in pursuance of or in connection with an arrangement whereunder—(*a*) the consideration for the transfer or conveyance was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or transferee . . . (2) For the purpose of this section, a company shall be deemed to be associated with another company if, but not unless both are companies with limited liability, and either—(*a*) one of them is the beneficial owner of not less than 90 per cent. of the issued share capital of the other . . ." The Crown contended that as the R company had at any rate indirectly provided the consideration for the transfer by means of its guarantee and as the R company was not a company associated at the time of the transfer with either the H company or the C company within the meaning of s. 50 of the 1938 Act, therefore, by the provisions of that section, the provisions of s. 42 of the 1930 Act did not apply to the transfer and therefore it was a "conveyance or transfer on sale" within the meaning of Sched. I of the Stamp Act, 1891, and was liable thereunder to *ad valorem* stamp duty. It was contended on behalf of the C company that as only part of the purchase price, namely, the sum of £238,404, had been guaranteed by the R company, and as the provisions of s. 50 of the 1938 Act contemplated the whole of the consideration being provided by a non-associated company, therefore, those provisions did not apply, and therefore *ad valorem* stamp duty was not payable by reason of the provisions of s. 42 of the 1930 Act. Macnaghten, J., held that, in effect, the R company had provided the whole consideration, consequently the provisions of s. 50 of the 1938 Act applied to the case and *ad valorem* stamp duty was chargeable on the transfer. The C company appealed.

SCOTT, L.J., said that the finding of the Commissioners was in the exact terms of s. 50 of the 1938 Act, and Macnaghten, J., in a carefully considered judgment dealing with the whole facts of the case, came to the conclusion that the Commissioners' view of the transaction was correct. He agreed with the judgment of Macnaghten, J., and had nothing to add.

GODDARD, L.J., said that the transaction in question was not a transaction which s. 42 of the 1930 Act was intended to protect at all. He agreed that the appeal should be dismissed.

DU PARCQ, L.J., concurred. Appeal dismissed.

COUNSEL: *Frederick Grant*, K.C., and *M. L. Gedge*; *The Attorney-General* (Sir Donald Somervell, K.C.) and *J. H. Stamp*.

SOLICITORS: *Ashurst, Morris, Crisp & Co.*; *Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* Trinidad Petroleum Development Co., Ltd.

Scott, Goddard and du Parcq, L.JJ. 4th May, 1944.

Revenue—Excess profits tax—Claim of company to deduct debt of £800,000 *from capital employed in standard period—Debt owed to subsidiary company during standard period, but not during chargeable accounting period—Statutory provisions that capital to be computed as if debt does not exist where one company owes debt to its subsidiary company—Whether statutory provisions only apply where debt is owed during both standard and chargeable accounting periods—Finance* (*No.* 2) *Act*, 1939 (2 & 3 *Geo.* 6, *c.* 109), *ss.* 13, 17, *Sched. VII, Pt. II, r.* 2 (i).

Appeal from the judgment of Macnaghten, J

The Crown appealed from the decision of Macnaghten, J., affirming the decision of the Special Commissioners that the sum of £800,000, being a debt within the meaning of the Finance (No. 2) Act, 1939, Sched. VII, Pt. II, r. 2 (i), was deductible by the T company from the capital which they used in the standard period as defined by s. 13 for the purposes of excess profits tax. The standard period was the years 1935 and 1937, and the chargeable accounting periods, as defined by s. 22 (*e*), were 1st April, 1939, to 31st July, 1939, and 1st August, 1939, to 31st July, 1940, respectively. For a period which began before the commencement of the standard period and which ended on a date in January, 1937, that is, during the standard period, the T company owed the sum of £800,000 to the B company, but on that latter date the debt was discharged. The T company was also a subsidiary company of the B company until the same date in January, 1937, but ceased to be so on that date. It was important from the T company's point of view that the debt of £800,000 should be deductible from the capital employed by them during the standard period because of the provisions of the proviso to s. 13 (3), which are as follows: "Provided that if the average amount of the capital employed in the trade or business in any chargeable accounting period is greater or less than the average amount of the capital employed therein in the standard period, the standard profits for a full year shall, in relation to that chargeable accounting period be increased, or, as the case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business." The statutory percentage as defined by subs. (9) was in the case of the T company 8 per cent. It followed that if the debt of £800,000 could be deducted from the capital employed by the T company during the standard period, the average amount of capital employed during the chargeable accounting period would be as compared with the average amount of the capital employed during the standard period correspondingly increased, and the T company would be entitled to add the statutory percentage of 8 per cent. of £800,000 to their standard profits. The Crown, however, contended that as the T company was a subsidiary company of the B company the £800,000 was not deductible from the capital employed by them during the standard period, by reason of the operation of s. 17 (1) of the Act, which provides as follows: "(1) Where any interest, annuity, or other annual payment, or any royalty or rent, is paid by one body corporate to another body corporate, and one of those bodies corporate is a subsidiary of the other . . . the capital, profits and losses of both bodies corporate shall be computed for the purposes of this part of this Act as if . . . (*b*) any debt in respect of which any such interest is payable did not exist." The T company had been paying interest to the B company, but they contended that s. 17 (1) only applied where the two companies were interconnected during a chargeable accounting period, and in this case they ceased to be interconnected before the beginning of any chargeable accounting period. Macnaghten, J., agreed with the Special Commissioners that the provisions of s. 17 (1) ought only to be read as applying to companies interconnected after the beginning of the chargeable accounting period, and that, therefore, the debt of £800,000 was deductible from the capital of the T company employed during the standard period. The Crown appealed.

SCOTT, L.J., said that s. 17 (1) was perfectly general and contained no hint of a condition that it was not to be applied in the standard period unless the company was still subsidiary during the chargeable accounting period, and in its plain language it must be construed as applying, not only in the case of a company which was subsidiary in both periods, but also of one which was subsidiary only in the standard period. The appeal would therefore be allowed and the case remitted to the Commissioners to compute the excess profits in accordance with the judgment.

GODDARD and DU PARCQ, L.JJ., concurred. Appeal of the Crown allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*; *J. Millard Tucker*, K.C., *Frederick Grant*, K.C., and *J. W. P. Clements.*

SOLICITORS: *Solicitor of Inland Revenue*; *Eley, Robb & Co.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

Colebrook *v.* Watson Investment Co., Ltd.

Vaisey, J. 9th June, 1944.

Sale of land—Mortgagee sells in 1919 *with consent of mortgagor—No application to court for leave to sell—Validity of sale—Courts* (*Emergency Powers*) *Act*, 1914 (4 & 5 *Geo.* 5, *c.* 78), *s.* 1.

Witness action.

In this action the plaintiff as vendor sought specific performance of a contract to sell to the defendants a house and grounds for £13,000. Under the contract the root of title was a conveyance dated the 5th December, 1919, by a mortgagee in exercise of his statutory power of sale. The mortgagor's personal representative, acting under the direction of the court in proceedings in which the mortgagor's estate was being administered, had consented to the sale, but there have been no applications in regard thereto under the Courts (Emergency Powers) Act, 1914. The defendants contended that this omission validated the conveyance.

VAISEY, J., said that under decisions which bound him there was no doubt that in cases to which the Courts (Emergency Powers) Act, 1939, applied it was not competent to interested parties to contract out of its provisions. The protection which the Act afforded to mortgagors could not be waived by them and an order of the court was an essential prerequisite to any exercise of a mortgagee's powers. If a similar disability were imposed by the Courts (Emergency Powers) Act, 1914, the deed of 1919 did not, it was argued, exercise the power validly or at all and operated only as a transfer of mortgage. The defendants asked him to reach that conclusion: (i) by necessary implication from the decisions on the Act of 1939; (ii) upon the principle which those decisions established, and (iii) having regard to the decision in *Anchor Trust Co.* v. *Bell* [1926] Ch. 805. There were noticeable differences of expression between the two Acts. During the whole time the 1914 Act was in operation nobody seriously supposed that it was not legitimate for a mortgagor, at a time when he was entitled to the protection of the Act, to waive such protection. The only reported decision on the point was that of Sargant, J., in *In re Sandow* [1916] W.N. 262. That authority was treated as accurately representing the law and the text-books were unanimous in taking the view that there was no need under the Act of 1914 for the enforcement of a mortgagee's remedies to be sanctioned by the court, provided they were consented to by the mortgagor. Lawrence, J., in *Anchor Trust Co.* v. *Bell*, *supra*, undoubtedly approved *In re Sandow*, *supra*. There had been three decisions on the 1939 Act. In none of them was *In re Sandow*, *supra*, disapproved of. These three decisions *Soho Square Syndicate* v. *E. Pollard & Co.* [1940] Ch. 638; *Bowmaker* v. *Tabor* [1941] 2 K.B. 1; and *Smart Bros.* v. *Ross* [1943] A.C. 84, could not conclude this present case. He saw no reason for coming to a decision which involved the proposition that contemporary theory and practice with regard to the Act of 1914 was fundamentally mistaken and wrong. Other words in the 1939 Act had been interpreted as excluding the possibility of "contracting out." The decisions to that effect were binding upon him, and he agreed with them. In none of them was it said that the law as laid down in relation to the Act of 1939 must necessarily have been applicable to the Act of 1914. In his judgment the generation which produced the Act of 1914 should be presumed also to have comprehended its meaning in this very material respect. He would accordingly hold the deed of 5th December, 1919, effectively conveyed the whole legal and equitable estate in the property of the plaintiff's predecessor in title and it constituted an unexceptionable root of title.

COUNSEL: *Charles Harman*, K.C., and *H. Hillaby*; *R. F. Roxburgh*, K.C., and *Raymond Jennings*.

SOLICITORS: *Walters & Co.*; *William Charles Crocker*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 1087. **Civilian Clothing.** The Clothing (Restrictions) Orders (Amendment) (No. 2) Order, Sept. 21.

E.P. 1089. **Cold Storage** (Control of Undertakings) (Charges) Amendment Order, Sept. 19.

E.P. 1073. **Control of Paper** (No. 64) Order, Sept. 15.

E.P. 1086. **Food.** Feeding Stuffs (G.B.) (Regulation of Manufacture) Order, Sept. 18.

E.P. 1091. Food (Home Grown Grains) (G.B.) Order, Sept. 21, amending the Oats (Control and Prices) (G.B.) Order.

E.P. 1085. Food. Onions Order, Sept. 18, amending the Home Grown Onions (Maximum Prices) Order.

E.P. 1079. Food. Root Vegetables (Maximum Prices) Order, Sept. 16.

No. 1084. **Inferior Court, England.** Procedure. Mayors and City of London Court (Original Actions) (Consolidation) Rules, July 21.

No. 1077. **National Fire Service** (General) Regulations, Sept. 16.

No. 1092. **National Health Insurance.** Navy, Army and Air Force Auxiliary Services Regulations, Sept. 19.

No. 1093. National Health Insurance. Reserve Forces Regulations, Sept. 19.

E.P. 1090. **Petroleum** Approval Order, Sept. 19.

No. 1081/S.51. **Police** (Scotland) Regulations, Aug. 30.

No. 1082/S.52. Police (Women) (Scotland) Regulations, Aug. 30.

No. 1070. **Road Vehicles** (Registration and Licensing) (Amendment) Regulations, Sept. 15.

E.P. 1053. **Vessels** (Immobilisation) Order, Sept. 11.

No. 1083. **War Pensions** (Indian Seamen, etc.) Scheme, Sept. 18.

BOARD OF TRADE.

Companies Act, 1929. Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. 23rd Day. 14th July, 1944.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Notes and News.

Honours and Appointments.

Mr. J. A. JOHNSON, aged thirty-six, Deputy Town Clerk of South Shields since 1937, has been appointed Town Clerk of Dover to succeed Mr. S. R. H. Loxton, who is going to Shrewsbury. Mr. Johnson was admitted in 1932 and Mr. Loxton in 1929.

Notes.

About 3,400 cases have been set down for hearing in the Divorce Division during the Michaelmas Law Sittings, which begin on 12th October.

The Prime Minister announced in the House of Commons on the 26th September that Asquith, J., has been appointed Chairman of the Royal Commission on Equal Pay. The names of members of the Commission will be published later.

At a meeting of the Board of Scottish General Insurance Co., Ltd., held on Tuesday, 26th September, 1944, Mr. A. Cyprian B. Webb, M.A., barrister-at-law, 9, Old Square, Lincoln's Inn, London, W.C.2, was co-opted a director of the Company.

WARNING AGAINST BIGAMY.

NEW NOTICE OF MARRIAGE DECLARATION.

In future all persons giving civil notice of marriage will sign a form of declaration containing a warning against the crime of bigamy.

The inclusion of this special warning has been undertaken by the Registrar-General, Sir Sylvanus Vivian, to give effect to the promise by the Earl of Munster, on behalf of the Government, in the House of Lords early this year, of action to strengthen as far as possible the safeguards against bigamous marriages.

Forms of civil notice of marriage have hitherto contained a paragraph in prominent type drawing attention to the fact that any false information given knowingly and wilfully will render the person concerned liable to prosecution for perjury.

In all future forms a second paragraph, also in prominent type, will be inserted. It is worded as follows:—

> And well knowing also that if, contrary to my belief expressed above that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, there is in fact such an impediment, any marriage contracted in pursuance of this Notice may be invalid or void and the contracting of the marriage may render one or both of the parties GUILTY OF A CRIME AND LIABLE TO THE PENALTIES OF BIGAMY OR SUCH OTHER CRIME AS MAY SO HAVE BEEN COMMITTED.

The words from "guilty" to the end of the paragraph are printed on the form in capital letters.

Ministry of Health,
General Register Office,
27th September, 1944.

Court Papers.

Supreme Court of Judicature.

MICHAELMAS SITTINGS, 1944.

HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Mr. Justice MORTON.

Such business as may from time to time be notified.

GROUP A.

Mr. Justice COHEN.

Mr. Justice COHEN will sit for the disposal of the Witness List.

Mondays—Bankruptcy Business.

Bankruptcy Motions will be heard on Mondays, 16th October, 6th and 27th November.

Bankruptcy Judgment Summonses will be heard on Mondays, 23rd October, 13th November and 4th December.

A Divisional Court in Bankruptcy will sit on Mondays, 30th October, 20th November and 11th December.

Mr. Justice VAISEY.

Mondays—Chamber Summonses.

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

Lancashire Business will be taken on Thursdays, 19th October, 2nd, 16th and 30th November and 14th December.

GROUP B.

Mr. Justice UTHWATT.

Mr. Justice UTHWATT will sit for the disposal of the Witness List.

Mondays—Companies Business.

Mr. Justice EVERSHED.

Mondays—Chamber Summonses.

Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.

Wednesdays—Adjourned Summonses.

Thursdays—Adjourned Summonses.

Fridays—Motions and Adjourned Summonses.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.		Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Thurs., Oct.	12	Mr. Jones	Mr. Blaker	Mr. Andrews
Fri.	13	Reader	Andrews	Jones
Sat.	14	Hay	Jones	Reader

		Group A.		Group B.	
Date.		Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey *Non-Witness.*	Mr. Justice Uthwatt *Witness.*	Mr. Justice Evershed *Non-Witness.*
Thurs., Oct.	12	Mr. Hay	Mr. Farr	Mr. Jones	Mr. Reader
Fri.	13	Farr	Blaker	Reader	Hay
Sat.	14	Blaker	Andrews	Hay	Farr